

R. GAIL TIBBETTS ET AL.
v.
BUREAU OF LAND MANAGEMENT

IBLA 81-160

Decided March 4, 1982

Appeal from a decision of Administrative Law Judge Robert W. Mesch holding various mining claims null and void. Utah AD-49-78; AD-50-78; AD-51-78.

Affirmed as modified.

1. Mining Claims: Location -- Mining Claims: Relocation

In order to amend a claim, it is necessary that the party seeking to so amend have present title to the claim, since, in the absence of such title, any act purporting to "amend" is actually in derogation of the original claim and must be treated as a relocation.

2. Mining Claims: Location -- Mining Claims: Relocation

Where a party alleges that a location notice, denominated as a relocation, is, in fact, an amendment of an earlier location, and gaps in the chain of title to the original claims are apparent on the record, that party must submit evidence eliminating any such hiatus in the chain of title. In the absence of such evidence, the purported amendment must be treated as a relocation.

3. Mining Claims: Location

Where a mining claimant seeks to amend various mining claims, there must be some way to ascertain which claims, in

fact, are being amended. Where it is impossible to identify specific claims with specific amendments, the amendment can be of no force or effect.

APPEARANCES: Aldine J. Coffman, Jr., Esq., Moab, Utah, for appellants;
Reid W. Nielson, Esq., Office of the Regional Solicitor for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

R. Gail Tibbetts and Ray Tibbetts appeal from a decision of Administrative Law Judge Robert W. Mesch, dated October 30, 1980, declaring various lode claims null and void. The claims involved are known as the Copperspur group (Nos. 1-42 and 61-118), the Jean group (Nos. 7-26, 28-48, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, 81-100, and 103-120), and the RG group (Nos. 101-126, 153-166, and 183-200). Location notices for these claims had been duly recorded under section 8 of the Mining in the Parks Act, 90 Stat. 1342, 1343, 16 U.S.C. § 1907 (1976).

This case originally arose as an appeal from a decision of the Utah State Office, dated August 28, 1978, holding these claims null and void because they were located upon land which had been withdrawn by the Act of October 27, 1972, 86 Stat. 1311, for inclusion in the Glen Canyon National Recreation Area, prior to the location of the claims. Appellants appealed to this Board, contending that these claims were, in fact, merely amendments of claims which had been located prior to the withdrawal of the land from mineral location.

In a decision styled R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979), this Board discussed the distinction between the relocation of a former claim and an amended location of such a claim, noting that while an amended claim is one made in furtherance of the earlier claim, a relocated claim is necessarily adverse to the prior location. Thus, while an amended claim will, in the absence of adverse intervening rights, relate back to the original claim, a relocation is, in essence, a new claim and, therefore, cannot relate back to a prior location.

Reviewing appellants' allegations that the claims in issue, located variously in 1974 and 1975, were not new claims but were, instead, amendments of claims which had been located prior to the withdrawal of the land, the Board reviewed appellants' submissions. We noted that nothing on the face of the 1974 or 1975 claim notices indicated that they were intended to be amendments rather than relocations. Id. at 228-29, 86 I.D. at 547. We stated, however, "while this omission does not inevitably lead to conclusion that no amended location was intended, it does properly give rise to an inference that such was not the intent." Id. We also noted that the alleged transfers of interest were oral, and that "the failure to commit a transfer of a mining claim to writing does give rise to a question of fact into which the Department may properly inquire." Id. at 228, 86 I.D. at 547.

Because of the uncertainties presented by the record before the Board, including what we perceived was an allegation that claimants had recorded a

copy of the 1974 and 1975 locations rather than the original location notices on the advice of a Park Service employee, we referred the matter to the Hearings Division for the assignment of an Administrative Law Judge to conduct a hearing on the issues which we had delineated in our discussion. 1/

A hearing was held before Administrative Law Judge Mesch on June 19, 1980. In his prehearing order of April 21, 1980, Judge Mesch defined the issues to be determined as follows:

1. Whether the 1974 and 1975 location notices for the Copperspur Nos. 1-42 and 61-118; the Jean Nos. 7-26, 28-48, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, 81-100 and 103-120; and the RG Nos. 101-126, 153-166, and 183-200, were amended locations rather than new locations or relocations.
2. Whether, if they were amendments of prior locations, the appellants held title to the original mining claims at the time of the 1974 and 1975 locations.
3. Whether, if the location notices for the Jean Nos. 7-20 were amendments of prior locations they include new land not contained in the original claim or exclude land contained in the original claim, and if land was excluded, whether it contained the only point of discovery for the original claim. 2/
4. Whether the appellants were misled as to which claims should be recorded by an employee of the National Park Service and, if so, whether estoppel will lie against the government.

In view of subsequent assertions that Judge Mesch went beyond the scope of the Board's order of remand, it is important to note that neither party objected to the Judge's statement of the issues, either at that time or at the hearing.

1/ In our earlier decision we expressly held that "the RG Nos. 131-152, inclusive, which were allegedly based on the Choprock Nos. 574-595, were null and void ab initio, since they were either located when the land was withdrawn, or, if deemed to be amended locations, sought to amend claims which were already void." *Id.* at 226, 86 I.D. at 546. This conclusion was premised on a belief that the original Choprock Nos. 574-595 had never been recorded. In light of our holding, Judge Mesch did not include the RG Nos. 131-152 in his statement of the issues or in his decision.

During our review of the present appeal, however, we have determined that the factual predicate of our initial holding was in error. Indeed, it is clear that the Choprock Nos. 574-595 were duly recorded. While this issue has not been raised in the pleadings to the Board, we do have the authority of the Secretary to correct our past errors when they become manifest to us. Accordingly, we will consider the RG Nos. 131-152 on the basis of the evidence of record and the testimony of appellants at the hearing.

2/ The particular factual problem which these claims presented was described in footnote 14 of our original decision.

In his decision, Judge Mesch reviewed in considerable detail the documentary evidence which had been before the Board together with the documents and testimony which had been presented at the hearing. In summary, he found with respect to the first issue that

the 1974 and 1975 locations were in fact new locations; that it was the intent of the locators named in the 1974 and 1975 location notices to locate new mining claims in their names; and that what were in fact new locations cannot be converted to amended locations by simply stating, after the fact, and contrary to the original intent, that they are amended locations. * * *

Even if it could be concluded that the 1974 and 1975 locations were intended as amended locations of earlier claims, a finding could not be made, on the basis of the record in this proceeding, that the amended locations were effective and valid. As previously noted, the evidence is confusing and is not sufficient to support a finding that the 1974 and 1975 locations (1) cover the land presently asserted by the appellants, and (2) overlie the earlier claims as presently asserted by the appellants.

(Decision at 7).

As to appellants' title to the earlier claims which they alleged were amended by the 1974 and 1975 locations, Judge Mesch ruled that as to the Copperspur claims, appellants had provided no evidence to show a chain of title from Bill Tibbetts (father of the appellants), Robert G. Park, William J. Jones, Fred Frazier, and Harold Provonsha, the colocators of the original claims, which were allegedly amended by the 1974 Copperspur locations and also pointed out that there was no indication how George Addison, whose name appeared as a colocator on the 1974 notice acquired any title whatsoever to the earlier claims (Decision at 8-10).

Because of the differing circumstances relating to the original claims which the Jean claims purportedly overlay, Judge Mesch's analysis on the Jean group was necessarily more extensive. Thus, Judge Mesch noted that appellants had shown no original location notices for the Circle "M" claims over which a portion of the Jean claims were located (most of the Jean Nos. 7-20), the only evidence relating to the location of the Circle "M" claims being a notation that they had been located by one Wilcox. No chain of title from Wilcox to appellants was ever shown.

Certain Jean claims also overlay earlier claims identified as the Circle "X," Circle "Y," and Circle "Z" (identified in an earlier filing before the Board as Jean Nos. 61-100, 103-120). These original claims had been located by Sammy Somerville, Clayton Stocks, Gail Tibbetts, and Robert Ruggeri. At the hearing, appellants presented written statements, undated, from Somerville and Stocks that they had transferred their interests to appellants. Nothing was submitted, however, relating to any transfer to appellants from Ruggeri. Thus, Judge Mesch concluded that appellants had not proved the

necessary chain of title to assert that their locations in 1975 were merely amendatory of the original locations. ^{3/}

The Jean Nos. 21-48 were alleged to overlay the Colt Nos. 1-27. The Colt Nos. 1-7 were originally located by Sammy Somerville and R. Gail Tibbetts in 1966. The Colt Nos. 8-27 were located by R. Gail Tibbetts, Chet Farrow, Clayton Stocks, J. H. Wardle, and Lory Free in 1967. Judge Mesch noted that appellants had submitted statements from Somerville, Farrow, Stocks, Wardle, and Free, that they had given their interests in these claims to Gail Tibbetts in 1970. (See Exhs. A, B, C, D, and E.) The Judge noted, however, that the Blair Report (a report submitted by appellants in their original appeal) indicated that the Colt Nos. 1-7 had been transferred to Paradox Mining and that there had been no indication of any subsequent transfer back to either Somerville or Tibbetts. With respect to the other Colt claims, Judge Mesch stated:

There is no reason to assume that the four original locators of the 1967 claims still held title to the claims at the time they purportedly transferred any interest they might have in the claims to Tibbetts and there is no reason to assume that Tibbetts still held title to the remaining interest in the claims at the time he allegedly acquired the interest of his co-locators and at the time of the alleged amended location notices in 1974. The appellants were aware that they had the burden of proof and there is no reason they could not have established, if such was the case, that there were no missing links in the chain of title and that the four original locators actually held a present interest that they could transfer to Tibbetts and that he actually held a present interest that would permit him, together with the transferred interests, to effect an amendment of the claims. Again, the appellants did not satisfy their burden of proving the truth of their assertions.

(Decision at 11-12).

Finally, turning to the RG claims, Judge Mesch noted that they allegedly overlay the Chet and Choprock claims. These claims were located by either Stocks and Farrow, or Farrow, Stocks, Gail Tibbetts, Wardle, and Free. Referring to his discussion of the "missing links" in the chain of title for other claims such as the Jean Nos. 21-48, Judge Mesch found that appellants had shown neither a present interest in the original locators in 1970 such as

^{3/} Judge Mesch also noted that the original documents before the Board recounted a transfer from all the original locators in 1967 to Paradox Mining Company, and that there was no indication that Paradox had ever quitclaimed back to appellants. Our review of the documents, however, indicate that it was contended that only Ruggeri quitclaimed to Paradox. This quitclaim also allegedly involved the Colt Nos. 1-7, which will be discussed, *infra*. The Judge is correct, however, that appellants failed to explain how they acquired the interest of Paradox, nor, even if they could show that they acquired the interest, did they submit any proof of the alleged quitclaim from Ruggeri to Paradox.

would support the assignment of their interest to Gail Tibbetts nor that Gail Tibbetts had a present interest in 1975 such as would permit him to amend the claims. In addition, he found that there was no evidence which would support a conclusion that Ray Tibbetts had any title in these claims prior to 1975.

Insofar as the particular question which we had posed relating to the Jean Nos. 7-20 was concerned, Judge Mesch reviewed the conflicting assertions of the appellants and concluded "the Jean Nos. 7-20, if they were in fact amendments of earlier locations, include new land not contained in the original claims and exclude land contained in the original claims."

With respect to the estoppel argument, Judge Mesch held that the record clearly showed that appellants did not rely on any advice of any employee of the United States such as could give rise to estoppel against the Government.

In their appeal, appellants generally attack Judge Mesch's decision as beyond the scope of this Board's prior order. Thus, they contend that the validity of the prior locations was never an issue until the Judge's decision. Moreover, they argue that:

[T]here was no instruction in the opinion of the Board of October, 1979, nor in the Notice of Judge Mesch, to the effect that the entire chain of title of the prior locations would have to be proven to his satisfaction before the issue of the actions by Tibbetts in the 1974 amendments could be considered.

Accordingly, the Appellants were not fairly put on notice of this requirement, either by the Interior Board of Land Appeals decision nor by Judge Mesch's Notice.

(Statement of Reasons at 2).

Appellants contend that the only issue was "whether Tibbetts had, in fact, received an oral transfer of the interest" in the mining claims from the other locators and argue that the evidence "is consistent with the representations by Tibbetts" that he did.

Appellants allege that the evidence also established that the locations were made to effectuate an abandonment of other claims which Park Service personnel determined to be excess. Moreover, appellants advert to two filings of "Amended Notices" in 1976 which they argue clearly indicate that the intent in the 1974 and 1975 actions was to amend the earlier claims and not relocate them.

[1, 2] We have indicated above that insofar as framing of the specific issues, no one had suggested that Judge Mesch had gone beyond the mandate of this Board until after his decision issued. Indeed, there is little ground for such an assertion, since the issues as posed by Judge Mesch were basically verbatim restatements of various statements of the Board in its earlier decision. See, e.g., R. Gail Tibbetts, supra at 230-31, 86 I.D. supra at 548 and n.14. The thrust of appellants' arguments appears to be that they were not put on notice that proof of "the entire chain of title" of the earlier locations was necessary. We disagree.

Intrinsic to the right to amend a claim is the prerequisite that the amender have present title to the claim, for if such title is lacking, an individual is not claiming through a prior location, but rather is initiating a claim of right adverse to the original location. ^{4/} In United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971), the court dealt with a number of allegations that various claims, located after the Ickes withdrawal, were actually amendments of claims located prior thereto. The court noted:

The Bureau found no evidence, and Consolidated produced none, of prior locations by Consolidated on these claims. Nor was there any evidence before the Bureau of a chain of title leading to Consolidated from holders of prior identifiable locations. A relocation cannot relate back unless the original location notice is proved.

Id. at 449. (Emphasis supplied.)

Contrary to appellants' assertion on appeal, nothing in Judge Mesch's decision purported to pass on the validity of the earlier location. Rather, Judge Mesch determined that the 1974 and 1975 locations were not intended as amendments and that appellants had not shown that they had full title in 1974 and 1975 to effectuate an amendment, even had such been the intent.

Insofar as this latter point is concerned, we agree with Judge Mesch that appellants' simply failed to show that they possessed all the interests of the original locators in the claims allegedly amended by the Copperspur Nos. 1-42, 61-118, and the Jean Nos. 7-20, 61-100, 103-120. Appellants clearly failed to show how they acquired any interests from Robert G. Parks, William J. Jones, Fred Frazier, Harold Provonsha, Robert Ruggeri, or the elusive Wilcox, listed as locators or colocators of these various claims. Similarly, insofar as the Jean Nos. 21-28 were concerned, Judge Mesch correctly pointed out that while the report by Blair, which appellants had submitted with their original location notices, indicated the earlier claims, over which the Jean Nos. 21-28 were located, had been transferred to Paradox Mining, there was no explanation how appellants had acquired the claims from Paradox Mining so that they would have the right to amend the claims. As to all these claims, therefore, we affirm Judge Mesch's finding that appellants failed to establish the necessary present title in 1974 and 1975 which would authorize an amendment of the earlier claims.

We are less persuaded by Judge Mesch's findings regarding the remaining claims, *i.e.*, Jean Nos. 29-48 and the RG group, on this question. There is no evidence in the record that anyone other than the original locators and

^{4/} We recognize that a colocator cannot attempt to relocate claims to the disadvantage of other claimants where the premise of the relocation is the failure to do assessment work. Such a relocated claim is held by the colocators as a constructive trustee for all of the original locators. See Stevens v. Grand Central Mining Co., 133 Fed. 28 (1904); Cadle v. Helfrich, 286 P. 186 (Arizona 1930). This rule, however, does not apply if the claim is abandoned rather than made subject to forfeiture by failure to perform the assessment work. See generally Cadle v. Helfrich, *supra* at 188-89.

the present appellants had ever held title to these claims. There is, in short, no evidence in this record that any "links" are missing. Thus, as to these claims we do not agree that appellants have failed to carry the burden of proof that they possessed full title to the original claims.

[3] Nevertheless, we agree with Judge Mesch that the record fails to show that the 1974 and 1975 locations were amendments. The first problem in attempting to treat these locations as amendments is that it is impossible from the 1974 and 1975 notices to determine which location is purporting to amend which earlier location. As an example, the RG No. 101 was shown in the Blair report as being in the NW 1/4 sec. 11, T. 36 S., R. 7 E. It was stated therein that the RG No. 101 was a relocation of the Choprock 548. The map, prepared by Blair, shows that the RG No. 101, joins the RG No. 102 on the north, the RG No. 103 on the west, and the RG No. 122 on the south. It abuts the west endline of the Jean No. 1 on its east sideline. It is also stated that the RG No. 102 is the old Choprock No. 549, the RG No. 103 is the old Choprock No. 546 and the RG No. 122 is the old Choprock No. 605. We would point out that the actual location notices for all the RG claims merely state that they are somewhere within T. 36 S., R. 7 E. The notices do not refer to any prior claim.

When one examines the original location notices for the Choprock claims, it is obvious that something is amiss. The Choprock Nos. 546 and 548 are situated in secs. 21 and 28, while the Choprock No. 549 is in sec. 21. The most startling deviation is that the Choprock No. 605, which according to Blair should abut Choprock No. 548 on the south side, is actually located in sec. 24, over 2 miles to the east and almost certainly north of Choprock No. 548.

To make matters even more complicated, in two exhibits submitted at the hearing before Judge Mesch (Exhs. I and J), the RG No. 101 is shown in E 1/2 of sec. 1, and, while RG Nos. 102 and 103 join it on the north and west, respectively, it is now joined on its south endlines by the RG Nos. 111 and 112. The Jean No. 1 which was formerly shown as abutting on the east sideline is now due west of the claim and the RG No. 122 no longer abuts the RG No. 101.

When one then compares the maps with the original location notices for the Choprock claims, confusion mounts as the Choprocks Nos. 546, 548, and 549, formerly located in secs. 21 and 28, are now found in sec. 1, while the Choprock No. 605, formerly in sec. 24, now overlaps secs. 1 and 12, having moved from a position over 2 miles east and slightly north of the other claims to a distance of 1/2 mile in a southwesterly direction from the claims.

Appellants' argument that this confusion was engendered by the inability to determine the precise location of the claims in relation to the cadastral survey simply does not fit the facts as disclosed. There are often problems in ascertaining the exact situs of land in the absence of a mineral survey. This is particularly true in mountainous terrain. Accordingly, it has long been recognized that to the extent that a description of a mining claim, as recorded, differs from its actual situs on the ground, the physical markings on the ground control, so long as they have been maintained. United States v. Kincanon, 13 IBLA 165, 168 (1973); Myer-Clark-Rowe Mines v. Steinfield, 80 P. 400, 401 (Ariz. 1905). What appellants have not explained, however, is how

the physical relationship of the various claims can constantly change. Thus, claims which are 2 miles apart become adjacent, claims located to the west of other claims migrate to the east of those claims, and the configuration of the claim groups alter with each successive map. Appellants have not even attempted to explain how these movements have occurred. There is no possible way to treat the 1974 and 1975 notices as amendments where it is impossible to ascertain what they, in fact, amended. Cf. United States v. 237,500 Acres of Land, 236 F. Supp. 44 (S.D. Cal. 1964).

Inasmuch as we have determined that it is impossible to treat 1974 and 1975 notices as amendments, it is unnecessary to examine the third issue formulated by Judge Mesch relating to the Jean Nos. 7-20. We will, however, briefly examine the estoppel question.

In retrospect, it is clear that we were not sufficiently precise in our earlier decision when we adverted to the estoppel question. Appellants submitted various testimony that they believed that if they abandoned various other claims not involved herein that the Government would not contest their remaining claims. Judge Mesch found that no such promise was made by any Government representative, and in any event, such promise, even if it had been made, would not work an estoppel against the Government. With both of these findings we agree.

Our purpose in requesting an inquiry, however, was directed toward a different possibility, viz., that the Government, through its agents, had advised appellants to relocate their claims and record the relocated claims (rather than the original claims) under the Mining in the Parks Act, supra. Nothing in the record developed below would support such a finding, and we agree with Judge Mesch that appellants have shown no basis to support the invocation of an estoppel in the instant case.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified, and all of the location notices filed with the Park Service, as discussed herein, are rejected and the claims are declared null and void ab initio.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

